

Saul Perloff (157092)
saul.perloff@aoshearman.com
Kathy Grant (*pro hac vice*)
kathy.grant@aoshearman.com
Andre Hanson (*pro hac vice*)
andre.hanson@aoshearman.com
Olin “Trey” Hebert (*pro hac vice*)
trey.hebert@aoshearman.com
ALLEN OVERY SHEARMAN
STERLING US LLP
300 W. Sixth Street, 22nd Floor
Austin, Texas 78701
Telephone (512) 647-1900

Christopher LaVigne (*pro hac vice*)
christopher.lavigne@aoshearman.com
ALLEN OVERY SHEARMAN
STERLING US LLP
599 Lexington Ave
New York, NY 10022
Telephone (212) 848-4000

Jennifer L. Keller (84412)
jkeller@kelleranderle.com
Chase Scolnick (227631)
cscolnick@kelleranderle.com
Craig Harbaugh (194309)
charbaugh@kelleranderle.com
Gregory Sergi (257415)
gsergi@kelleranderle.com
KELLER/ANDERLE LLP
18300 Von Karman Ave., Suite 930
Irvine, CA 92612
Telephone (949) 476-0900

Attorneys for Plaintiff/Counterclaim-
Defendant GUARDANT HEALTH, INC.

Kevin P.B. Johnson (SBN 177129)
kevinjohnson@quinnmanuel.com
Victoria F. Maroulis (SBN 202603)
victoriamaroulis@quinnmanuel.com
Andrew J. Bramhall (SBN 253115)
andrewbramhall@quinnmanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065-2139
Telephone (650) 801-5000
Facsimile (650) 801-5100

Anne S. Toker (*pro hac vice*)
annetoker@quinnemanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010-1601
Telephone (212) 849-7000
Facsimile (212) 849-7100

Valerie Lozano (SBN 260020)
valerielozano@quinnmanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone (213) 443-3000
Facsimile (213) 443-3100
Attorneys for Defendant/Counterclaim-
Plaintiff NATERA, INC.

Case No. 3:21-cv-04062-EMC

**JOINT STIPULATION RE JURY
INSTRUCTIONS PURSUANT TO DKT. 719**

GUARDANT HEALTH, INC.,

**Plaintiff and Counterclaim-
Defendant,**

vs.

NATERA, INC.,

Defendant and Counterclaim-Plaintiff.

1 The Parties to the above-entitled action jointly submit this Joint Stipulation re Jury
 2 Instructions pursuant to this Court's Order, Dkt. 719 (October 15, 2024). By entering this
 3 Stipulation, the parties expressly preserve, and do not waive, their previously submitted objections.
 4

5 Instruction No. 35 re False Advertising – Lanham Act - Element One Part 1 - False or Misleading

6 Statement

7 [The parties propose the following edit to Instruction Number 35:]

8 The party asserting a Lanham Act claim must prove that one or more statement of fact was false or
 9 misleading. In making this determination, you must consider any such statement in the context of the
 10 entire advertisement. The party may prove a statement is false or misleading in one of two ways:

- 11 1. By showing that the statement is literally false. Only an unambiguous message can be
 literally false. A statement may be literally false on its face, that is, when it explicitly states
 something untrue. A statement also may be literally false by necessary implication. A
 statement is literally false by necessary implication when it does not explicitly state
 something that is untrue, but considering the advertisement in its entirety, the only reasonable
 interpretation of the statement is that it is untrue. Advertisements using an “apples-to-
 oranges” comparison are literally false by necessary implication where things that are non-
 comparable are portrayed as otherwise equivalent.
- 12 2. By showing that a statement is misleading. A statement is misleading if it is literally true or
 ambiguous but misled, confused, or deceived a significant portion of the consuming public or
 is likely to mislead, confuse, or deceive customers.

13

14 Instruction No. 38 re False Advertising – Lanham Act – Claim Element One, Claims Relating to
 15 Peer-Reviewed, Published Articles

16 [The parties propose the following edit to Instruction Number 38:]

17

18 Statements in a commercial advertisement or promotion which are based on test results from a peer-
 19 reviewed, published scientific study cannot be literally false unless that party challenging the
 20 advertisement proves that:

- 21 1. **[Guardant Proposal: Even though the study is presumed reliable, t**The statement in the
 advertisement or promotion is not, on its face, supported by the peer-reviewed, published
 scientific study.]
- 22 2. **[Natera Proposal: The statement in the advertisement of promotion is not, on its face,**
 supported by the peer-reviewed, published science study. In other words, even if the
 study is reliable, it does not establish the statement at issue in the advertisement.]
- 23 2. The statement conveys a false message that is beyond the scope of the peer-reviewed,
 published scientific study, such as comparing test results from a different study when the
 results are not actually comparable.

1 3. The statement is supported by the peer-reviewed, published scientific study but the
2 results of the study were fabricated or fraudulently created.

3 A party also may show that a commercial advertisement or promotion that relies on a peer-reviewed,
4 published scientific study is misleading if it reports results from the study in a way that is deceptive
5 and that deceived a significant portion of the commercial audience.

6 Instruction No. 48 re Lanham Act False Advertising – Actual Damages

7 [The parties propose the following edit to Instruction No. 48:]

8 A party has the burden of proving actual damages by a preponderance of the evidence. Damages
9 means the amount of money which will reasonably and fairly compensate the party for any injury
10 you find was caused by the other party's false advertising.

11 Actual damages may include:

12 1. The injured party's lost profits, which is the profits it would have earned if not for the false or
13 misleading advertising.
14 a. The injured party's lost profit is determined by deducting all allowable expenses the
15 party incurred from gross revenue the party would have generated by the product.
16 Expenses are all costs incurred in generating the gross revenue.
17 b. When considering a claim for lost profits, you may consider evidence that some or all
18 of those claimed losses may be caused by other market factors or reasons and not as a
19 result of the accused false advertising.
20 2. The cost of corrective advertising reasonably required to correct any deception caused by the
21 false advertising. Corrective advertising costs must be attributable to the false or misleading
22 advertising.

23 Instruction No. 52 re Willful False Advertising – Lanham Act

24 [The parties propose the following instruction:]

25 If you find that a party engaged in false advertising, you must also determine whether that party
26 did so willfully. A party willfully engaged in false advertising if it knew its advertising was false
27 or misleading, or it acted with reckless disregard for, or willful blindness to, the false or misleading
28 nature of its advertising.

1 Stipulated and submitted,

2 Dated: October 18, 2024

**ALLEN OVERY SHEARMAN
STERLING US LLP**

3 **SAUL PERLOFF**

4 By: /s/ Saul Perloff
Saul Perloff

5
6 Attorney for Plaintiff/Counter-Defendant
7 GUARDANT HEALTH, INC.

8 Dated: October 18, 2024

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**
KEVIN P.B. JOHNSON
VICTORIA F. MAROULIS
ANDREW J. BRAMHALL
ANNE TOKER

12 By: /s/Andrew J. Bramhall
13 Andrew J. Bramhall

14 Attorney for Defendant/Counter-Plaintiff
15 NATERA, INC.

16
17
18
19
20
21
22
23
24
25
26
27
28

FILER'S ATTESTATION

Pursuant to Civil LR 5.1(i)(3), the undersigned hereby attests that concurrence in the filing of this **JOINT STIPULATION RE JURY INSTRUCTIONS** has been obtained from counsel for Guardant Health, Inc. and is electronically signed with the express permission of Natera's counsel.

Date: October 18, 2024

By: /s/Andrew J. Bramhall
Andrew J. Bramhall

Attorney for Defendant/Counter-Plaintiff
NATERA, INC.